

Item LEG05-04 Response Form

Title: Legislative Proposal: Prejudgment Claim of Right to Possession (amend Code Civ. Proc., § 415.46(d))

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m. Friday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (LEG05-04)

Title	Legislative Proposal: Prejudgment Claim of Right to Possession (amend Code Civ. Proc., § 415.46(d))
Summary	The Judicial Council would sponsor legislation to amend Code of Civil Procedure section 415.46(d) to require that a copy of the prejudgment claim of right to possession that was served be attached to the proof of service.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov Daniel Pone, Senior Attorney, Office of Governmental Affairs, 916-323-3121, daniel.pone@jud.ca.gov
Discussion	<p>Code of Civil Procedure section 415.46 provides the procedure for serving a prejudgment claim of right to possession on persons who may claim to have occupied the premises at the time of the filing of an unlawful detainer action. After the claim is served, a proof of service of the claim must be filed with the court. (See Code Civ. Proc., § 415.46(d).)</p> <p>The statutory provision on proof of service does not currently require that a copy of the claim that was served be attached to the proof of service. Hence, a court reviewing claims cannot be certain that the proper claim and notice were served. This proposal would amend section 415.46(d) of the Code of Civil Procedure to require that a copy of the <i>Prejudgment Claim of Right to Possession</i> be attached to the proof of service.</p> <p>The text of amended Code of Civil Procedure section 415.46 is attached.</p>
	Attachment

Invitation to Comment (LEG05-04)

Legislative Proposal

Section 415.46 of the Code of Civil Procedure would be amended as follows:

1 **415.46.** (a) In addition to the service of a summons and complaint in an action for
2 unlawful detainer upon a tenant and subtenant, if any, as prescribed by this article, a
3 prejudgment claim of right to possession may also be served on any person who appears
4 to be or who may claim to have occupied the premises at the time of the filing of the
5 action. Service upon occupants shall be made pursuant to subdivision (c) by serving a
6 copy of a prejudgment claim of right to possession, as specified in subdivision (f),
7 attached to a copy of the summons and complaint at the same time service is made upon
8 the tenant and subtenant, if any.

9
10 (b) Service of the prejudgment claim of right to possession in this manner shall be
11 effected by a marshal, sheriff, or registered process server.

12
13 (c) When serving the summons and complaint upon a tenant and subtenant, if any, the
14 marshal, sheriff, or registered process server shall make a reasonably diligent effort to
15 ascertain whether there are other adult occupants of the premises who are not named in
16 the summons and complaint by inquiring of the person or persons who are being
17 personally served, or any person of suitable age and discretion who appears to reside
18 upon the premises, whether there are other occupants of the premises.

19 If the identity of such an occupant is disclosed to the officer or process server and the
20 occupant is present at the premises, the officer or process server shall serve that occupant
21 with a copy of the prejudgment claim of right to possession attached to a copy of the
22 summons and complaint. If personal service cannot be made upon that occupant at that
23 time, service may be effected by (1) leaving a copy of a prejudgment claim of right to
24 possession attached to a copy of the summons and complaint addressed to that occupant
25 with a person of suitable age and discretion at the premises, (2) affixing the same so that
26 it is not readily removable in a conspicuous place on the premises in a manner most
27 likely to give actual notice to that occupant, and (3) sending the same addressed to that
28 occupant by first-class mail.

29 In addition to the service on an identified occupant, or if no occupant is disclosed to the
30 officer or process server, or if substituted service is made upon the tenant and subtenant,
31 if any, the officer or process server shall serve a prejudgment claim of right to possession
32 for all other persons who may claim to occupy the premises at the time of the filing of the
33 action by (1) leaving a copy of a prejudgment claim of right to possession attached to a
34 copy of the summons and complaint at the premises at the same time service is made
35 upon the tenant and subtenant, if any, (2) affixing the same so that it is not readily
36 removable in a conspicuous place on the premises so that it is likely to give actual notice
37 to an occupant, and (3) sending the same addressed to “all occupants in care of the named
38 tenant” to the premises by first-class mail.

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1 The person serving process shall state the date of service on the prejudgment claim of
2 right to possession form. However, the absence of the date of service on the prejudgment
3 claim of right to possession does not invalidate the claim.
4

5 (d) Proof of service under this section shall be filed with the court, shall have a copy of
6 the claim served attached, and shall include a statement that service was made pursuant to
7 this section. Service on occupants in accordance with this section shall not alter or affect
8 service upon the tenant or subtenant, if any.
9

10 (e) If an owner or his or her agent has directed and obtained service of a prejudgment
11 claim of right to possession in accordance with this section, no occupant of the premises,
12 whether or not such occupant is named in the judgment for possession, may object to the
13 enforcement of that judgment as prescribed in Section 1174.3.
14

15 (f) The prejudgment claim of right to possession shall be made on the following form: